

SERVED: April 22, 1999

NTSB Order No. EA-4752

UNITED STATES OF AMERICA
NATIONAL TRANSPORTATION SAFETY BOARD
WASHINGTON, D.C.

Adopted by the NATIONAL TRANSPORTATION SAFETY BOARD
at its office in Washington, D.C.
on the 6th day of April, 1999

_____)	
JANE F. GARVEY,)	
Administrator,)	
Federal Aviation Administration,)	
)	
Complainant,)	
)	Docket SE-14942
v.)	
)	
MARK LEE GROSSMAN,)	
)	
Respondent.)	
_____)	

OPINION AND ORDER

Respondent appeals the November 25, 1997 order ¹ of Administrative Law Judge Patrick G. Geraghty summarily affirming the Administrator's allegation that respondent violated section 61.15(e), 14 CFR Part 61, of the Federal Aviation Regulations ("FARs"), and imposing a 15-day

¹ A copy of the law judge's order is attached.

suspension of his airline transport pilot ("ATP")
certificate.² We deny the appeal.³

Respondent was stopped for driving under the influence
of alcohol in Alameda County, California, on August 22,
1994, and at that time he was issued an "Administrative Per
Se Order of Suspension/Revocation."⁴ Although section

² FAR § 61.15 provides, in relevant part, as follows:

§ 61.15 Offenses involving alcohol or drugs.

* * * * *

(e) Each person holding a certificate issued
under this Part shall provide a written report of
each motor vehicle action to the FAA, Civil
Aviation Security Division (AAC-700), P.O. Box
25810, Oklahoma City, OK 73125, not later than 60
days after the motor vehicle action. The report
must include --

(1) The person's name, address, date of
birth, and airman certificate number;

(2) The type of violation that resulted in
the conviction or the administrative action;

(3) The date of the conviction or
administrative action;

(4) The state that holds the record of
conviction or administrative action; and

(5) A statement of whether the motor vehicle
action resulted from the same incident or arose
out of the same factual circumstances related to a
previously-reported motor vehicle action.

³ The Administrator's order of suspension sought a 30-day
suspension, but she has not appealed the law judge's
modification of sanction.

⁴ The Administrative Per Se Order indicates that respondent
surrendered his drivers license to the on-scene officer.
The Order also notified respondent that the suspension or

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61.15(e) required respondent to notify the Administrator "not later than 60 days after the motor vehicle action" taken against his drivers license, respondent, who was allegedly unaware of this requirement, did not report the incident until his next Federal Aviation Administration ("FAA") medical examination in April of 1995. ⁵

Respondent requests that we "convert the certificate action to a civil penalty[.]" He argues that he had no intent to conceal the administrative action, as evidenced by his disclosure of the incident on his FAA medical examination form, and that he was unaware of the separate 60-day reporting requirement. ⁶ His arguments are

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revocation would become effective 30 days from its issuance, or, in other words, on September 21, 1994.

⁵ The record does not reflect the exact date of respondent's examination, but respondent believes that it occurred sometime in April of 1995. Respondent's Declaration at 2.

⁶ Respondent also argues that his failure to abide by the requirements of section 61.15(e) was "the result of his reasonable reliance on an incompetent attorney" who "neither filed a notice under [section 61.15(e)] nor advised [him] to do so." Respondent's Brief at 5. Aside from the fact that respondent provides no significant details of the alleged incompetence of his former attorney, other than his statement that he "paid \$750 [for the attorney to] make sure that there would be no unexpected consequences to [his] pilot certificate," we expect pilots, especially ATP-rated pilots, to demonstrate professionalism and know of the regulations that apply to them. See Administrator v. Kearney, NTSB Order No. EA-4208 at 4-5 (1994) (ignorance of reporting requirement is not a defense); see also Administrator v. Wilson, NTSB Order No. EA-4314 at 5 (1995) ("the law judge's reduction in sanction to a 25-day suspension [was based on] the questionable rationale that a

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unavailing, however, for he erroneously relies, primarily, upon a comparison of the facts of his case to our reasoning in Administrator v. Smith , NTSB Order No. EA-4088 (1994). In Smith , we reasoned sanction should have been waived because, unlike here, the respondent there had relied upon incomplete and misleading information provided by the FAA. Id. at 7.⁷ The law judge did not abuse his discretion when he refused to impose a civil penalty in lieu of a suspension, and, in addition, a 15-day suspension is supported by precedent. See Wilson , supra (affirming a 25-day suspension for a single violation of section 61.15(e)); Kearney , supra (30-day suspension); Administrator v. Anderson , NTSB Order No. EA-4072 (1994) (30-day suspension).⁸

(continued . . .)

reduction in an otherwise appropriate sanction was warranted because . . . [of] erroneous advice of counsel").

⁷ In Smith , although we waived sanction, we nonetheless found that respondent violated section 61.15(e) when he reported the section 61.15(e)-required information on his FAA medical examination form 11 days past the 60-day deadline of section 61.15(e). Id. at 6 ("even if substantial compliance were a valid defense, in this case we would not find that respondent substantially complied with section 61.15(e) because he did not submit any information, in any form, to [the] FAA's Security Division").

⁸ Respondent also argues, in the alternative, that the law judge erred by determining that safety in air commerce warrants suspension of respondent's certificate, and by failing to hear or consider "evidence and arguments that respondent substantially complied with" section 61.15(e) and "evidence that respondent self reported the motor vehicle action at issue." Respondent's Brief at 2. These arguments
(continued . . .)

ACCORDINGLY, IT IS ORDERED THAT:

1. Respondent's appeal is denied; and
2. The 15-day suspension of respondent's ATP

certificate shall commence 30 days after the service date indicated on this opinion and order. ⁹

HALL, Chairman, FRANCIS, Vice Chairman, HAMMERSCHMIDT, GOGLIA, and BLACK, Members of the Board, concurred in the above opinion and order.

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have no merit. See Administrator v. Gotisar, NTSB Order No. EA-4544 at 3 (1997) ("FAA is fully justified in sanctioning non-flying conduct that raises safety concerns"); 14 CFR 61.15(f) (specifying that failure to adhere to the reporting requirements of section 61.15(e) is grounds for revocation or suspension of an airman certificate); 55 Fed. Reg. 31,300 (stating, as set forth in the Administrator's brief, that purpose of sanction provisions of section 61.15 is to enhance aviation safety and "to remove from navigable airspace pilots who have demonstrated an unwillingness or inability to comply with certain safety regulations and to assist in the identification of personnel who do not meet the medical standards of the regulations"). See also Administrator v. Ortiz, NTSB Order No. EA-4635 at 4 (1998) ("[s]ummary judgment is appropriate where . . . there is no genuine issue of *material fact*") (emphasis added); footnote 7, supra.

⁹ For the purposes of this order, respondent must physically surrender his airman certificate to an appropriate representative of the FAA pursuant to FAR § 61.19(f).